



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

4/10/95

IN THE MATTER OF  
ROCKAWAY BOROUGH WELL FIELD  
SUPERFUND SITE

Klockner & Klockner, a general  
partnership  
Multi-form Metals, Inc.  
Ferraz Corporation  
Roned Realty Company, a limited  
partnership  
Lusardi's Cleaners, Inc.

Respondents

Proceeding Under Sections 107(a),  
122(h), 122(i) and 122(l) of the  
Comprehensive Environmental  
Response, Compensation, and  
Liability Act, as amended,  
42 U.S.C. Sections 9607(a),  
9622(h), 9622(i) and 9622(l).

ADMINISTRATIVE ORDER  
ON CONSENT

Index No. II CERCLA-94-0123

## I. INTRODUCTION

1. This ADMINISTRATIVE ORDER ON CONSENT ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Klockner & Klockner, a general partnership, Multi-form Metals, Inc., Ferraz Corporation, Roned Realty Company, a limited partnership, and Lusardi's Cleaners, Inc. (hereinafter "Respondents") to settle EPA's claim for Past Response Costs. This Order provides for reimbursement of certain Past Response Costs incurred and paid by EPA prior to the effective date of this Order for response activities taken relating to operable units one and two (groundwater) at the Rockaway Borough Well Field Superfund Site, Rockaway, New Jersey ("Site").

## II. JURISDICTION

2. This Order is issued under the authority vested in the President of the United States by Sections 107(a), 122(h), 122(i) and 122(l) of the Comprehensive Environmental Response,

Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. Sections 9607(a), 9622(h), 9622(i) and 9622(l). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Federal Register 2923 (1987), and further delegated to the Regional Administrators on December 31, 1989, by EPA Delegation No. 14-14-D.

3. Respondents agree to make all payments required by the terms and conditions of this Order. Respondents agree not to contest the authority or jurisdiction of the Regional Administrator to issue or enforce this Order, and agree not to contest the basis or validity of this Order or any of its terms in any action by the United States or EPA to enforce this Order, or to enforce a judgment relating to this Order.

### III. PARTIES BOUND

4. This Order shall apply to and be binding upon each of the Respondents, its present and former partners, successors, and assigns. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent to this Order. Any change in ownership or corporate or other legal status of any of the Respondents or of the Site shall not alter Respondents' obligations under this Order.

5. Until such time as the Respondents fully satisfy their payment obligations pursuant to Paragraphs 26 through 31 of this Order, Respondents shall provide a copy of this Order to any prospective or subsequent owners or successors before Respondents' property rights, stock, or assets are transferred. Respondents shall be responsible for noncompliance with this Order.

### IV. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. As used in this Order, unless the context clearly requires some other meaning, the following terms shall have the following meanings:

- a. CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq.
- b. Day shall mean calendar day.

- c. EPA shall mean the United States Environmental Protection Agency.
- d. Hazardous substance shall mean that term as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- e. NCP shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, codified at 40 C.F.R. Part 300, and all amendments or modifications thereto.
- f. NJDEP shall mean the New Jersey Department of Environmental Protection.
- g. Past Response Costs shall mean all costs, including but not limited to, direct and indirect costs that the United States incurred and paid with regard to the Site through March 7, 1992, as to payroll costs, and March 31, 1992, as to all other costs. These costs include EPA's expenditures of \$2,265,882.68 for the following response activities through March 7, 1992, as to payroll costs, and March 31, 1992, as to all other costs: preliminary site work; RI/FSS for operable units one and two (groundwater); and other operable unit one and two activities.
- h. Respondents shall mean Klockner & Klockner, a general partnership, Multi-form Metals, Inc., Ferraz Corporation, Roned Realty Company, a limited partnership, and Lusardi's Cleaners, Inc.
- i. Site shall mean the Rockaway Borough Well Field Superfund Site, located in Rockaway Borough, Morris County, New Jersey, as referred to in EPA's September 30, 1991 Record of Decision ("ROD"). The Site encompasses approximately 2.1 square miles of Rockaway Borough, and includes the areal extent of contamination where hazardous substances have migrated or threaten to migrate, and all areas in proximity to the contamination necessary for implementation of the response action. The Site is bordered to the north and west by Rockaway Township and to the east and south by Denville Township.
- j. United States shall mean the United States of America.

## **V. FINDINGS OF FACT**

7. In December 1982, the Site was placed on EPA's National Priorities List ("NPL") of Superfund Sites, 40 C.F.R. Part 300, Appendix B, which has been promulgated pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B).
8. The Site includes a municipal well field serving approximately 10,000 people. In 1980, the State conducted sampling at Rockaway Borough Well Field's three water supply wells and points within the Borough's water distribution system. The studies revealed the presence of thirteen volatile organic compounds, including high concentrations of tetrachloroethylene (PCE) and trichloroethylene (TCE), as well as inorganic contaminants. These substances are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
9. The presence of VOC contamination caused the Borough of Rockaway to install a three-bed granular activated carbon (GAC) adsorption treatment system. The system began operating in July 1981, treating approximately 900,000 gallons per day (gpd) of raw water pumped from the Borough's wells.
10. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, the State commenced, under a Cooperative Agreement with EPA in March 1985, a first operable unit Remedial Investigation (RI)/Feasibility Study (FS) for the Site pursuant to the NCP. The first operable unit RI/FS confirmed the presence of the VOC contamination, including TCE and PCE.
11. EPA signed a ROD for a first operable unit (groundwater) on September 29, 1986. The selected remedy described in this ROD called for the Borough to continue to operate and maintain the existing GAC filtration system, and directed the continuation of the RI/FS in an attempt to identify positively the contaminant source(s) and delineate further the full extent of contamination.

12. In May 1988, the State formally transferred the lead on the Site to EPA to perform a supplemental RI/FS, which was completed by EPA in July 1991, pursuant to 40 C.F.R. §300.430. In July 1991, EPA released to the public the supplemental RI/FS, which stated that TCE and PCE contamination found at the Site emanated from multiple source areas within the Borough.
13. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the supplemental RI/FS and the proposed plan for remedial action on July 18, 1991, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the supplemental RI/FS and the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.
14. The decision by EPA on the operable unit two (groundwater) remedial action to be implemented at the Site as a result of the supplemental RI/FS is embodied in a ROD, signed on September 30, 1991. The ROD includes a responsiveness summary which embodies EPA's responses to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.
15. On July 18, 1991, EPA issued a General Notice Letter of potential liability to each of the Respondents. On May 22, 1992, EPA issued a Special Notice Letter to each of the Respondents, which provided Respondents with the opportunity to undertake and/or finance response activities at the Site, and reimburse the United States for past and future response costs at the Site.
16. On January 20, 1994, a settlement, embodied in a judicial Consent Decree between the United States and Thiokol Corporation, was lodged with the federal district court in Newark, New Jersey. See United States v. Thiokol Corporation, No. 94-320 (HAA) (hereinafter "Thiokol Consent Decree")

Pursuant to the Thiokol Consent Decree, Thiokol Corporation agreed to undertake certain response activities at the Site and pay the United States \$800,000 in settlement toward Past Response Costs. In addition, Thiokol Corporation agreed to reimburse EPA for Future Response Costs, as that term is defined in the Thiokol Consent Decree, relating to operable units one and two at the Site.

17. On February 11, 1994, notice of the above-referenced settlement was placed in the Federal Register pursuant to Section 122 (d)(2) of CERCLA, and a thirty day public comment period began on that date. The United States received written comments relating to the proposed settlement from the Borough of Rockaway, Ferraz Corporation, and Klockner & Klockner. The comments will be withdrawn upon the execution by Respondents of this Order.
18. On June 1, 1994, EPA sent a demand letter to each of the Respondents for unreimbursed Past Response Costs, which total approximately \$1,500,000.

#### **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

19. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

20. Contaminants found at the Site and identified in the FINDINGS OF FACT above, are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute a "pollutant or contaminant" that presented an imminent and substantial danger to public health, welfare or the environment under Section 104(a)(1) and 106(a) of CERCLA, 42 U.S.C. Section 9604(a)(1) and 9606(a).

21. The presence, migration and potential migration of hazardous substances at the Site constituted actual and/or threatened "releases" into the "environment" as defined in Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

22. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

23. Respondents are responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

24. The actions taken by EPA in response to the release and/or threatened release of hazardous substances from the Site were necessary to protect the public health, welfare or the environment, were in the public interest, and were consistent with CERCLA and the NCP.

#### **VII. NOTICE, APPROVAL AND PUBLIC COMMENT**

25. EPA has notified the State of New Jersey that this Order is being issued. Issuance of this Order has received the prior written approval of the Attorney General of the United States, as required by Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622 (h)(1). Pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622 (i), notice of this Order shall be published in the Federal Register with a public comment period for thirty (30) days. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Order disclose facts or considerations which indicate that this Order is inappropriate, improper, or inadequate. The parties understand and agree that final issuance and execution of this Order by the Regional Administrator is subject to the public notice and comment procedures set forth in Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i).

#### **VIII. REIMBURSEMENT OF COSTS**

26. Within thirty (30) calendar days of the effective date of this Order, each Respondent shall remit a certified or cashier's check to EPA in the following amounts in reimbursement of Past Response Costs:

Klockner & Klockner partnership: \$508,500.00  
Multi-form Metals, Inc.: \$135,600.00  
Ferraz Corporaton: \$101,700.00  
Roned Realty Company partnership: \$79,665.00  
Lusardi's Cleaners, Inc.: \$33,900.00

27. Checks remitted pursuant to this Order shall be made payable to the "Hazardous Substance Superfund" and shall include the name of the Site, the Site Identification number (02-81), the Regional Lock Box Number 360188M, and the title and index number of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency, Region II  
Superfund Accounting  
P.O. Box 360188M  
Pittsburgh, PA 15251.

28. Copies of the transmittal letter and check shall be sent simultaneously to the Remedial Project Manager and the Assistant Regional Counsel for the Site, at the addresses specified below.

New Jersey Superfund Branch I  
Emergency and Remedial Response Division  
United States Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866  
Attn: Courtney McEnery, Rockaway Borough Well Field  
Remedial Project Manager

Office of Regional Counsel  
New Jersey Superfund Branch  
United States Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866  
Attn: Bruce H. Aber, Rockaway Borough Well Field  
Staff Attorney

#### **IX. INTEREST FOR LATE PAYMENT**

29. If any Respondent fails to make its payment obligation under this Order by the date specified herein, said Respondent shall pay to EPA interest on its unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest to be paid shall begin to accrue on the effective date of this Order. Interest shall accrue at the rate specified through the date of the Respondent's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of Respondent's failure to make timely payments under Section VIII Reimbursement of Costs.

30. Payment of interest under this Section or penalties under Section X, below, shall not alter Respondents' obligation to comply with this Order.

#### **X. CIVIL PENALTIES**

31. If any Respondent fails to pay the amount it owes to EPA pursuant to Section VIII Reimbursement of Costs on or before 30 days after receipt of a copy of the signed Order from EPA, said Respondent shall be subject to a civil penalty of up to \$25,000 per day for such failure or refusal to pay or otherwise comply with the terms of this Order pursuant to Section 122 (1) of CERCLA, 42 U.S.C. §9622(1).



## **XI. RELEASE OF LIABILITY**

32. Respondents shall resolve their respective liabilities to EPA for Past Response Costs upon receipt by EPA of the payments required by Section VIII Reimbursement of Costs, and any amounts due under Section IX Interest for Late Payment, or Section X Civil Penalties.

## **XII. CONTRIBUTION PROTECTION**

33. With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4). Nothing in this order precludes Respondents from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

## **XIII. RESERVATIONS OF RIGHTS**

34. Respondents are not released from any liability for any response actions or response costs beyond the scope of this Order, including but not limited to other removal or remedial activities, activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or response actions undertaken or response costs incurred by EPA after the effective date of this Order.

35. The United States reserves the right to bring an action against Respondents for damages for injury to, destruction of, or loss of natural resources, including the costs of assessing such injury, destruction or loss resulting from release of hazardous substances at the Site for damages to natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6).

36. The United States, on behalf of EPA, reserves the right to bring an action against Respondents under Section 107 of CERCLA for recovery of all response costs incurred by EPA and/or the United States relating to the Site other than for Past Response Costs.

37. The United States, on behalf of EPA, reserves the right to bring an action against any Respondent to enforce the Respondent's obligation to pay the amount of Past Response Costs specified in Paragraph 26, above, to collect any interest and late-payment penalty amounts due under Section X Interest and Penalties for Late Payment, above, and to seek penalties pursuant

to Section 109 of CERCLA, 42 U.S.C. Section 9609 for any and all violations of this Order.

38. Nothing in this Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the EPA or the United States may have against any person, firm, corporation or other entity not a signatory to this Order.

39. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Except as expressly provided in this Order, nothing in this Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek recovery of response costs, injunctive relief, statutory penalties, or punitive damages.

#### **XIV. DISCLAIMER**

40. By signing this Order and making payments required under this Order, Respondents do not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of Respondents in this Order shall not be considered an admission of liability, and this Order shall not be admissible as evidence of liability in any judicial or administrative proceeding other than a proceeding by the United States or EPA to enforce this Order, or to enforce a judgment relating to this Order. Respondents retain their right to assert claims against other potentially responsible parties at the Site.

#### **XV. OTHER CLAIMS**

41. In entering into this Order, Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9606, for any payments made pursuant to Section VIII. Reimbursement of Costs, of this Order. Respondents also waive any right to present a claim under Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 and 9612, for any payments made pursuant to Section VIII. Reimbursement of Costs of this Order. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondents further waive all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of Respondents' performance of its obligations under Section VIII Reimbursement of Costs, of this Order.

42. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or

equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

**XVI. EFFECTIVE DATE AND MODIFICATION**

43. The effective date of this Order shall be the date it is signed by the Regional Administrator. EPA will make all reasonable efforts to notify Respondents in a timely manner of the date of signing of this Order.

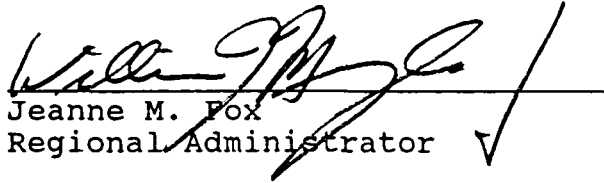
44. This Order may be amended by mutual agreement of EPA and the Respondents. Amendments shall be in writing and shall be signed by Respondents and the Regional Administrator and shall be effective when signed by the Regional Administrator.

45. No informal advice, guidance, suggestions, or comments will be construed as relieving Respondents of their obligations under this Order.

CONSENT:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

  
\_\_\_\_\_  
Jeanne M. Fox  
Regional Administrator

Date: April 10, 1995

Klockner & Klockner

by the duly authorized representative named, titled and signed hereunder, hereby consents to this order and agrees to be bound by the terms and conditions thereof:

BY: *Daniel Klockner*  
DANIEL KLOCKNER, III  
General Partner of  
Klockner & Klockner

Date: October 4, 1994

Witness:  
*Stener Hammond*

Multi-form Metals, Inc.

by the duly authorized representative named, titled and signed hereunder, hereby consents to this order and agrees to be bound by the terms and conditions thereof:

BY:



NAME E. CARL FABEND

Title President

Date: October 5, 1994  
~~September~~

Ferraz Corporation

by the duly authorized representative named, titled and signed hereunder, hereby consents to this order and agrees to be bound by the terms and conditions thereof:

Jean. Claude GILBERT

BY:

NAME

Vice President.

Title

Date: September, 1994

RONED REALTY COMPANY

By the duly authorized representative named, titled and signed hereunder, hereby consents to this order and agrees to be bound by the germs and conditions thereof:

RONED REALTY COMPANY, a Limited Partnership

BY: 

NAME STEVE RUBENSTEIN

TITLE GENERAL PARTNER



**Lusardi's Cleaners, Inc.**

by the duly authorized representative named, titled and signed hereunder, hereby consents to this order and agrees to be bound by the terms and conditions thereof:

BY:

Joseph P. Lusardi

NAME

Title

Date: September 28, 1994